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SOUTHERN DISTRICT OF CALIFORNIA

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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 775 WQH BLM

14 UNIVERSAL HILLCREST, LLC, individually)
15 and on behalf of all others similarly situated,)

16 Plaintiff,)

17 vs.)

18 REDDY ICE HOLDINGS, INC., REDDY ICE)
CORPORATION, ARCTIC GLACIER)
19 INCOME FUND, ARCTIC GLACIER INC.,)
ARCTIC GLACIER INTERNATIONAL INC.)
20 and HOME CITY ICE COMPANY,)

21 Defendants.)

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

qr

1 Plaintiff Universal Hillcrest, LLC ("Universal"), on behalf of itself and all others similarly
2 situated, brings this action under the federal antitrust laws, Sections 4 and 16 of the Clayton Act, 15
3 U.S.C. §§15 and 26, to obtain injunctive relief and recover treble damages and the costs of suit,
4 including reasonable attorney and expert fees, for the injuries to Plaintiff and members of the
5 proposed Class it represents resulting from defendants' violations of the federal antitrust laws,
6 specifically Section 1 of the Sherman Antitrust Act, 15 U.S.C. §1. The allegations set forth below
7 are based upon information and belief pursuant to the investigation of counsel, except for
8 information based on personal knowledge.

9 NATURE OF CLAIM

10 1. This antitrust class action arises out of an international conspiracy among defendants
11 and their co-conspirators with the purpose and effect of fixing prices, allocating markets and
12 geographic territories and committing other anticompetitive practices designed to unlawfully restrain
13 trade in the market(s) for packaged cubed, crushed, block and dry ice ("Packaged Ice") in the United
14 States and Canada. Packaged Ice is sold by defendants to supermarkets, mass merchants, convenience
15 stores, wholesale distributors and users of Packaged Ice.

16 2. Pursuant to Rules 23(a), 23(b) and 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff
17 seeks treble damages, injunctive relief, attorneys' fees and costs under the antitrust laws of the United States
18 on behalf of themselves and all others similarly situated.

19 JURISDICTION AND VENUE

20 3. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. §§15
21 and 26, and pursuant to 28 U.S.C. §§1331, 1337(a). This Court has supplemental jurisdiction over
22 the state law claims pursuant to 28 U.S.C. §1367(a), and diversity jurisdiction over Plaintiff's state
23 law claim under 28 U.S.C. §1332.

24 4. This Court has personal jurisdiction over each of the defendants because each of the
25 defendants: (a) committed acts in furtherance of the conspiracy alleged herein in this District;
26 (b) transacted business in Packaged Ice and other products in this District; (c) maintain and have
27 maintained continuous and systemic contacts with this District over a period of years; or
28 (d) purposefully availed itself of the benefits of doing business in this District. Accordingly, each

1 defendant maintains minimum contacts with this District more than sufficient to subject it to service
2 of process and sufficient to comply with due process of law.

3 5. Venue is proper in this judicial district pursuant to 15 U.S.C. §22 and 28 U.S.C.
4 §1391(b) and (c) because some of the defendants reside, or are licensed to do business or are doing
5 business, or are found or transact business, in this District and/or the claims arose in this District.

6 **PARTIES**

7 6. Plaintiff Universal owns and operates a restaurant and nightclub in San Diego,
8 California. Universal purchased Packaged Ice directly from one or more of the defendants during the
9 Class Period, and was damaged as a result of defendants' unlawful conduct.

10 7. Defendant Reddy Ice Holdings, Inc. ("Reddy Ice Holdings") is a Delaware corporation
11 with its principal place of business located in Dallas, Texas. Reddy Ice Holdings describes itself as
12 the largest manufacturer and distributor of packaged ice in the United States. It sells its products
13 primarily under the "Reddy Ice" brand to approximately 82,000 locations in 31 states and the District of
14 Columbia. Reddy Ice Holdings serves most significant consumer packaged goods channels of
15 distribution, as well as restaurants, special entertainment events, commercial users and the
16 agricultural sector.

17 8. Indeed, Reddy Ice Holdings is the largest ice company in North America, recording
18 2007 sales of \$339 million. It has the dominant market position in the U.S. sunbelt states, from
19 Florida to Arizona. Reddy Ice Holdings manufactures and distributes ice products, including cubed
20 ice, crushed ice, half-moon and cylindrical ice, block ice, and dry ice. Reddy Ice Holdings sells
21 approximately 1.9 million tons of ice per year, primarily packaged in seven and ten pound bags,
22 principally to convenience stores and supermarkets. During the Class Period, as defined below,
23 Reddy Ice Holdings began trading on the New York Stock Exchange. Prior to August 12, 2005, it had
24 been privately held under the name Packaged Ice, Inc. During the Class Period, Reddy Ice Holdings
25 directly and/or through the control of its subsidiaries and affiliates manufactured, marketed, sold
26 and/or distributed Packaged Ice in this District and/or in other districts throughout the United States.

27 9. Defendant Reddy Ice Corporation is a Delaware Corporation with its principal of
28 business in Dallas, Texas. Reddy Ice Corporation is a wholly-owned subsidiary of defendant Reddy

1 Ice Holdings. During the Class Period, Reddy Ice Corporation directly and/or through the control of
2 its subsidiaries and affiliates manufactured, marketed, sold and/or distributed Packaged Ice in this
3 District and/or other districts throughout the United States.

4 10. Collectively, Reddy Ice Holdings, Inc. and Reddy Ice Corporation are referred to as
5 "Reddy Ice." Each of the Reddy Ice defendants joined the conspiracy alleged herein and is legally
6 responsible for its conduct because its directors, members, officers, employees and/or agents, acting
7 within the scope of their authority, reached unlawful agreement(s) with their competitors to
8 unlawfully restrain competition. Alternatively, each of the Reddy Ice defendants is legally
9 responsible because it acted through, facilitated, dominated or controlled the actions of another
10 Reddy Ice defendant in furtherance of the conspiracy alleged herein.

11 11. Defendant Arctic Glacier Income Fund is a Canadian holding company with its
12 principal place of business in Winnipeg, Manitoba, Canada. Arctic Glacier Income Fund describes
13 itself as a leading producer, marketer and distributor of high-quality packaged ice in North America
14 under the brand name of "Arctic Glacier Premium Ice." Arctic Glacier operates 37 manufacturing
15 plants and 50 distribution facilities across Canada and the northeast, central and western United States
16 servicing more than 70,000 retail accounts.

17 12. Arctic Glacier Income Fund is the second-largest producer, marketer, and distributor of
18 packaged ice in North America, with total revenues of \$249 million for 2007. Of these revenues,
19 more than 80 percent comes from its U.S. operations, in which it has dominant market positions in
20 major eastern seaboard cities such as New York and Philadelphia, New England, California, and the
21 Midwest. The company also controls most of the Packaged Ice sales in Canada. During the Class
22 Period, Arctic Glacier Income Fund directly and/or through the control of its subsidiaries and
23 affiliates manufactured, marketed, sold and/or distributed Packaged Ice in this District and/or in
24 other districts throughout the United States.

25 13. Defendant Arctic Glacier, Inc. is a Canadian corporation with its principal place of
26 business in Winnipeg, Manitoba, Canada. Arctic Glacier, Inc. is a wholly-owned subsidiary of
27 defendant Arctic Glacier Income Fund. During the Class Period, Arctic Glacier, Inc. directly and/or
28 through the control of its subsidiaries and affiliates manufactured, marketed, sold and/or distributed

1 Packaged Ice in this District and/or other districts throughout the United States.

2 14. Defendant Arctic Glacier International Inc. is a Delaware corporation with its
3 principal place of business in West St. Paul, Minnesota. Arctic Glacier International Inc. is a
4 wholly-owned subsidiary of defendant Arctic Glacier Income Fund. During the Class Period, Arctic
5 Glacier International Inc. directly and/or through the control of its subsidiaries and affiliates
6 manufactured, marketed, sold and/or distributed Packaged Ice in this District and/or other districts
7 throughout the United States.

8 15. Collectively, Arctic Glacier Income Fund, Arctic Glacier, Inc. and Arctic Glacier
9 International Inc. are referred to as "Arctic Glacier." Each of the Arctic Glacier defendants joined
10 the conspiracy alleged herein and is legally responsible for its conduct because its directors,
11 members, officers, employees and/or agents, acting within the scope of their authority, reached
12 unlawful agreement(s) with their competitors to unlawfully restrain competition. Alternatively, each
13 of the Arctic Glacier defendants is legally responsible because it acted through, facilitated,
14 dominated or controlled the actions of another Arctic Glacier defendant in furtherance of the
15 conspiracy alleged herein.

16 16. Defendant Home City Ice Company ("Home City Ice") is a privately-held Ohio
17 Corporation with its principal place of business in Cincinnati, Ohio. Home City Ice sells and/or
18 distributes Packaged Ice across all of Ohio, Indiana, Illinois, Kentucky, and West Virginia, as well as
19 parts of Michigan, Pennsylvania, Tennessee, New York, and Maryland. Home City Ice manufactures
20 4,400 tons of ice per day in 28 manufacturing plants, with 36 distribution centers to serve the
21 Midwest. During the Class Period, Home City Ice directly and/or through the control of its
22 subsidiaries and affiliates manufactured, marketed, sold and/or distributed Packaged Ice in this
23 District and/or other districts throughout the United States.

24 **CO-CONSPRATORS AND AGENTS**

25 17. Other natural persons, corporations, and entities not named as defendants herein, have
26 participated in the unlawful conspiratorial activity alleged herein in violation of the antitrust laws of
27 the United States.

28

19. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on its own behalf and on behalf of all others similarly situated. The proposed class includes all persons, corporations, and other legal entities in the United States (excluding defendants, their subsidiaries, and any co-conspirators), who purchased Packaged Ice directly from one or more of the defendants (the "Class") in the United States or Canada at any time from at least January 1, 2002 through the present (the "Class Period").

20. The members of the Class are so numerous and geographically dispersed across the country that joinder of all Class members would be impracticable. Due to the nature of the claims asserted here, Plaintiff believes that members of the Class are located throughout the United States and Canada. The exact number of Class members is unknown by Plaintiff at this time, but Plaintiff believes that the Class numbers in the thousands and their identities can only be discovered through inspection of defendants' and their co-conspirators' records, which are or should be readily available.

21. Plaintiff's claims are typical of the members of the Class because Plaintiff and all members of the Class were damaged by the same wrongful conduct of the Defendants alleged herein. Plaintiff and the Class purchased Packaged Ice at artificially maintained, non-competitive prices established by the actions of defendants and their unnamed co-conspirators in connection with the wrongful conduct alleged herein.

24 22. Plaintiff will fairly and adequately protect the interests of the Class. The interests of
25 Plaintiff are coincident with, and not antagonistic to, those of the Class. In addition, Plaintiff is
26 represented by counsel who are experienced and competent in the prosecution of complex class
27 action antitrust litigation.

1 23. Questions of law and fact common to the members of the Class predominate over
2 questions that may affect only individual members, if any, in that defendants have acted on grounds
3 generally applicable to the entire Class. Among the questions of law and fact common to the Class
4 are:

5 a. Whether defendants conspired with the purpose and effect of fixing prices,
6 allocating markets and committing other anticompetitive practice designed to unlawfully restrain the
7 trade of Packaged Ice;

8 b. Whether defendants' conduct violated Section 1 of the Sherman Act;

9 c. The existence, duration, and illegality of the contract, combination or
10 conspiracy alleged herein;

11 d. The identity of the co-conspirators;

12 e. The effect upon and the extent of injuries sustained by Plaintiff and members
13 of the Class and the appropriate type and/or measure of damages;

14 f. Whether defendants took affirmative steps to conceal the contract, combination
15 or conspiracy alleged herein; and

16 g. Whether Plaintiff and the Class are entitled to declaratory and/or injunctive
17 relief.

18 24. Class action treatment is superior to any alternatives for the fair and efficient
19 adjudication of the controversy alleged herein. Such treatment will permit a large number of
20 similarly situated persons to prosecute their common claims in a single forum simultaneously,
21 efficiently, and without the unnecessary duplication of effort and expense that numerous individual
22 actions would engender. The prosecution of separate actions by individual members of the Class
23 would create a risk of inconsistent or varying adjudications, establishing incompatible standards of
24 conduct for defendants. Class treatment will also permit the adjudication of relatively small claims
25 by certain class members, who could not afford to individually litigate an antitrust claim against
26 large corporate defendants.

27 25. This action presents no difficulties of management that would preclude its
28 maintenance as a class action.

1 **INTERSTATE TRADE AND COMMERCE**

2 26. The defendants are leading manufacturers of Packaged Ice in the United States and
3 Canada. The Packaged Ice industry is over a billion dollar a year industry, operating throughout the
4 United States and Canada. During the Class Period, defendants manufactured, marketed, distributed,
5 and/or sold Packaged Ice to customers throughout the United States and Canada, utilizing the means
6 and instrumentalities of interstate trade and commerce.

7 27. Defendants' and their co-conspirators' unlawful activity had a direct, substantial, and
8 reasonably foreseeable effect upon interstate trade and commerce. The unlawful restraints of trade
9 alleged herein have directly and substantially affected interstate commerce in that the defendants have
10 deprived Plaintiff and the Class of the benefits of free and open competition in the Packaged Ice
11 market throughout the United States and Canada.

12 **ANTICOMPETITIVE CONDUCT**

13 28. Defendants are the largest manufacturers of Packaged Ice in the United States and
14 North America.

15 29. Beginning at least as early as January 1, 2002, the exact date being unknown to
16 Plaintiff, and continuing thereafter to present day, defendants and their coconspirators engaged in an
17 unlawful contract, combination or conspiracy with the purpose and effect of fixing prices, allocating
18 markets and committing other anticompetitive practices designed to unlawfully fix, raise, maintain,
19 and/or stabilize prices of Packaged Ice in a *per se* violation or unreasonable restraint of trade in
20 violation of Section 1 of the Sherman Act.

21 **THE PACKAGED ICE INDUSTRY**

22 30. Packaged Ice is sold throughout the United States principally to convenience stores,
23 supermarkets and other retail outlets, primarily in 7 and 10 pound bags, as well as in block form.

24 31. Sales of Packaged Ice are approximately \$1.8 billion annually. About half of those
25 sales are produced by third-party manufacturers, with the other half produced in-house (ice
26 machines). Sales by defendants comprise approximately 70% of third-party manufacturers' sales of
27 Packaged Ice.

28 32. Canada is a major exporter of ice into the United States.

1 33. The Packaged Ice industry has high barriers to entry. Many Packaged Ice customers
2 carry only one brand of ice and have long term relationships of many years with their suppliers. A
3 new entrant into the Packaged Ice market would have to incur multimillion dollar costs, including
4 manufacturing plants and equipment, energy, transportation, fuel costs, and distribution infrastructure.
5 Because of these high costs, new or small distributors are not able to meet the peak needs of large
6 multistate customers and cannot compete successfully for such customers. The industry has high
7 start-up and replacement costs, and many customers carry only one brand of ice and have long term
8 relationships of ten or more years with the manufacturer from whom they purchase Packaged Ice
9 products.

10 34. There are no economic substitutes for Packaged Ice.

11 35. Packaged Ice is a commodity product, which in a competitive market would be sold
12 primarily on the basis of price. Defendants' anticompetitive conduct has enabled them to fix, raise,
13 maintain and stabilize the price of Packaged Ice in the geographic areas allocated to them at
14 artificially high levels.

15 36. The Packaged Ice Industry has undergone substantial consolidation within the last
16 few years.

17 a. Defendant Reddy Ice has continuously purchased small ice companies in
18 various locations. During 2006, Reddy Ice purchased ten ice companies, and during 2007, it
19 purchased an additional twenty ice companies.

20 b. Arctic Glacier has purchased numerous smaller ice companies. In 2006,
21 Arctic Glacier acquired Happy Ice LLC, the largest ice company in upstate New York. Also in
22 2006, it acquired six companies collectively known as California Ice, which enabled Arctic Glacier
23 to become the largest Packaged Ice producer in California. In 2007, Arctic Glacier purchased an
24 additional company called Union Ice in Southern California.

25 37. Through acquisitions, defendants have increased their market power and reduced the
26 ability of any other Packaged Ice companies to compete for customers serviced by defendants.

27 38. During the Class Period, Defendants engaged in illegal, anticompetitive conduct by,
28 *inter alia*, allocating markets so that Defendants were no longer in competition with each other.

1 39. This resulted in the following market division: (a) Reddy Ice dominates the market in
2 the U.S. sunbelt states, from Florida to Arizona, and the Northwest (AZ, NM, TX, OK, AR, LA, MI,
3 AL, GA, FL, SC, NC, VA, CO, DE, DC, HI, ID, KA, KY, MD, MS, NV, NJ, OR, PA, TN, UT, WA,
4 WV and WY); (b) Arctic Ice dominates the market in the Central and Northeastern states and
5 California (CA, ND, SD, CA, NE, KS, MO, IA, MN, WI, MI, PA, DE, NJ, NY, CT, VT, NH and
6 ME); and (c) Home City Ice dominates the market in the Midwest (IL, OH and IN). There is virtually
7 no overlap between the geographic markets in which each Defendant operates.

8 40. Defendants agreed not to compete head to head in any of the markets that one of them
9 dominates. Each region of the U.S. market, as alleged herein, is controlled by one particular
10 Packaged Ice manufacturer. The market share of non-defendant companies that manufacture and
11 distribute Packaged Ice is extremely limited.

12 41. By engaging in conduct that allocated the market among the defendants, price
13 competition was reduced or eliminated throughout the United States and Canada.

14 42. The Packaged Ice industry is highly seasonal, characterized by peak demand during the
15 warmer months of May through September. Approximately 69 percent of annual revenues occur
16 during this time.

17 43. Demand for Packaged Ice within specific geographic areas is affected by weather
18 conditions. There is an extended peak selling season in the southern United States, where
19 temperatures remain warm beyond September. Revenues typically increase during particularly hot
20 summers. Cool and/or rainy seasons, however, negatively impact ice purchases.

21 44. The Antitrust Division of the United States Department of Justice ("DOJ"), is
22 investigating possible anticompetitive practices in the Packaged Ice business.

23 45. The DOJ investigation follows a complaint to Canada's Competition Bureau
24 ("Bureau") by Polar Ice, a smaller Packaged Ice manufacturer in western Canada, who alleged that
25 Arctic Glacier engaged in strong-arm tactics in the Edmonton geographic area, including "muscling,"
26 bribing, and offering kickbacks to the smaller company's customers.

27 46. The court in Canada found that Arctic Glacier had engaged in conduct violative of
28 Canada's competition law to prevent the smaller ice company in from competing with Arctic Glacier

1 to deliver ice to a particular customer. Among other things, the court found that Arctic Glacier had
2 used intimidation, bribery, and other unlawful means and methods to force the customer to stop
3 seeking competitive prices from the small ice company, with the intention of driving that small
4 competitor out of business. The Canadian court awarded Polar Ice \$50,000 in damages.

5 47. Arctic Glacier defendants have acknowledged that it received a subpoena in
6 connection with the DOJ investigation on or about March 5, 2008.

7 48. Just prior to this news, defendant Arctic Glacier Income Fund had reported a fourth-
8 quarter loss of \$3.7 million on revenue of \$36.3 million. In the same quarter of the previous year, the
9 fund lost \$6.2 million, or 19 cents a unit, on revenue of \$39.9 million. They reported that the stronger
10 Canadian dollar reduced reported sales by \$4.5 million during the quarter.

11 49. Also on or about March 6, 2008, Reddy Ice announced that federal officials executed
12 a search warrant at the Company's corporate office in Dallas on March 5, 2008.

13 50. Reddy Ice announced that the DOJ took "various documents and information," but
14 would not say whether computers were taken. A DOJ spokesperson stated that the agency was
15 "investigating the possibility of anti-competitive practices in the packaged-ice industry."

16 51. Between December 1, 2007 and January 3, 2008, both the Chief Operating Officer
17 and Chief Executive Officer of Reddy Ice resigned, just prior to the time the DOJ executed its search
18 warrants.

19 52. Defendants are members of several trade associations relating to the Packaged Ice
20 industry, and their executives have served on the boards of directors and various standing
21 committees of these organizations. These trade associations hold regular meetings of their boards,
22 committees, and members, which defendants' representatives have attended, and which provide the
23 opportunity for defendants to meet and communicate with each other concerning the markets,
24 customers and prices of Packaged Ice.

25 53. For example, defendants are members of the International Packaged Ice Association
26 ("IPIA"), which is headquartered in Tampa, Florida. Ben Key, Reddy Ice's Executive Vice President
27 – Sales and marketing, recently served as the Chairman of the IPIA Executive Committee. Nancy
28 Thorn, Director of marketing at Reddy Ice, and Keith McMahon, President and Chief Executive

1 Officer at Arctic Inc., are members of the IPIA Board of Directors. In addition, Ms. Thorn,
2 Mr. McMahon, and Tommy Sedler, Operations Manager and Treasurer of Home City, are members
3 of the IPIA Marketing Committee.

4 54. IPIA holds meetings of its Board of Directors and Committees, as well as an annual
5 meeting of its members. Representatives of defendants attended such meetings. IPIA's 2006 annual
6 meeting was held on November 23-December 3, 2006, in Tucson, Arizona, and its 2004 annual
7 meeting was held on November 12-17, 2004, in La Quinta, California.

8 55. There are regional trade associations that are affiliated with IPIA, and of which
9 defendants are members. Defendants' representatives have been members of the board of directors
10 or various committees of these regional trade associations. In addition, like the IPIA, these regional
11 trade associations hold regular meetings of their boards, committees and members, which have been
12 attended by defendants' representatives, and which have afforded defendants opportunities to meet
13 and communicate concerning the market, customers and prices of Packaged Ice.

14 56. For example, Arctic Glacier and Home City are members and their representatives are
15 officers of the Northeastern Ice Association ("NIA"). Keith McMahon of Arctic Glacier, and
16 Tommy Sedler and Ted Sedler of Home City are members of NIA. Ted Sedler also currently serves
17 as First vice President and Treasurer of NIA. NIA typically holds meetings of its officers and Board
18 of Directors in the spring and holds its member conventions in the fall. Its Board of Directors
19 meetings have been held in the following locales: Washington, DC (2001); Williamsburg, VA
20 (2002); Bahamas (2003); New York, NY (2004); Ledyard, CT (2006); and Lake George, NY (2007).
21 Its annual conventions have been held in the following locales: Providence, RI (2001); Ledyard, CT
22 (2002); New Orleans, LA (2003); Atlantic City, NJ (2004); Montreal, Canada (2005); Boston, MA
23 (2006); and Lake George, NY (2007). Representatives of Arctic Glacier and Home City have
24 attended these meetings and conventions.

25 57. In addition, Arctic Glacier and Reddy Ice are members of the Western Ice
26 Association ("WIA"), which is also affiliated with the IPIA. The WIA's members include William
27 Brick, formerly Chairman and CEO of Reddy Ice and currently its Executive Chairman, and Jim
28 Weaver, currently President, CEO and a member of the Board of Directors of Reddy Ice, as well as

1 several representatives of Arctic Glacier. WIA also holds periodic meetings of its Board of
2 Directors and committees, as well as annual meetings of its members. Representatives of Arctic
3 Glacier and Reddy Ice have attended these meetings.

4 ALLEGATIONS OF ANTITRUST INJURY

5 58. The unlawful contact, combination or conspiracy alleged above had and has the
6 following effects, among others:

7 a. Prices charged by defendants and their co-conspirators to plaintiff and Class
8 members for Packaged Ice were maintained at artificially high and noncompetitive levels;

9 b. Plaintiff and Class members were required to pay more for Packaged Ice
10 than they would have paid in a competitive marketplace unfettered by defendants' and their c-
11 conspirators' collusive and unlawful conduct; and

12 c. Plaintiff and Class members have been deprived of the benefits of free, open
13 and unrestricted competition in the market for Packaged Ice.

14 59. During the Class Period covered, defendants charged Plaintiff and the Class
15 anticompetitive prices for Packaged Ice. By reason of the alleged violations of the antitrust laws,
16 Plaintiff and the Class have sustained injury to their business or property, having paid higher prices for
17 Packaged Ice than they would have paid absent the illegal contract, combination or conspiracy, and,
18 as a result, have been injured in their business and have suffered damages in an amount presently
19 undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and
20 prevent.

21 60. The specific amounts of damages have not yet been determined because such
22 determination will require discovery. When these amounts have been determined, Plaintiff will seek
23 leave of Court to amend this Complaint to include such amounts.

24 EQUITABLE TOLLING FOR FRAUDULENT CONCEALMENT

25 61. Throughout the conspiracy alleged herein, defendants affirmatively and actively
26 concealed their unlawful activity from Plaintiff and the Class. While Plaintiff has diligently sought
27 to protect itself from unlawful activity, Plaintiff was unable to detect this conspiracy, which by its
28

1 nature is self-concealing. Furthermore, defendants acted fraudulently and deceptively to conceal the
2 unlawful collusion by conduct including:

3 a. Falsely representing to Plaintiff and/or other purchasers that prices and
4 markets for Packaged Ice were fair and competitive, or that price increases were caused by costs of
5 raw materials or other market forces or other false and pretextual justifications, when in fact the
6 pricing was set through the conspiracy alleged herein;

7 b. Conducting discussions through covert telephone calls and meetings;

8 c. Confining participation in the unlawful activity to a limited number of
9 persons so as to reduce the risk of detection;

10 d. Avoiding either references in documents, or the creation of documents, that
11 would implicate defendants for their participation in unlawful collusion;

12 e. Using coded words in documents and conversations to conceal the collusion
13 in the sale and distribution of Packaged Ice; and/or

14 f. Destroying or hiding documents that would constitute evidence of
15 participation in the conspiracy alleged herein;

16 62. Plaintiff has exercised due diligence in seeking to protect itself from the types of
17 unlawful acts that in fact occurred. Despite this diligence, Plaintiff did not learn of the conspiracy,
18 and could not have learned of the conspiracy, until the existence of ongoing criminal investigations
19 was publicly disclosed in early 2008.

20 **COUNT I**

21 **VIOLATION OF SECTION 1 OF THE SHERMAN ANTITRUST ACT**

22 63. Plaintiff incorporates by reference the allegations above as though fully set forth
23 herein.

24 64. Beginning at least as early as January 1, 2002 and continuing to the present, the exact
25 dates being unknown to Plaintiff, defendants and un-named conspirators entered into and engaged in
26 a contract, combination, or conspiracy in an unreasonable restraint of trade in violation of the
27 Section 1 of the Sherman Act.

28

65. The formulating and furthering their conspiracy, defendants and their co-conspirators engaged in unlawful anti-competitive activities, including:

a. Participating in meetings and conversations to discuss the prices of Packaged Ice, levels of output of Packaged Ice, and customers and markets for Packaged Ice;

b. Agreeing during those meetings and conversations to fix the prices of Packaged Ice sold to Plaintiff and other purchasers;

c. Agreeing during those meetings and conversations not to compete in the sale of Packaged Ice to Plaintiff and other purchasers and/or to allocate market share and sales volume;

d. Issuing price announcements and price quotations and charging prices consistent with the unlawful agreements reached;

e. Agreeing to set output and/or capacity of Packaged Ice produced;

f. Fixing output of Packaged Ice consistent with the agreements reached;

g. Monitoring the actions of other conspirators to verify that they charged prices and otherwise refrained from competition as agreed between the conspirators; and

h. Fraudulently concealing the existence and activities of the Conspiracy.

66. As a proximate result of defendants' unlawful conduct, Plaintiff and the Class have sustained damage by paying supra-competitive prices that they would not have had to incur but for the unlawful conduct of defendants as alleged herein.

67. The conduct of defendants and their co-conspirators constitutes a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. §1 and is at a minimum an unreasonable and unlawful restraint of trade.

COUNT II

**FOR RESTITUTION, DISGORGEMENT AND IMPOSITION OF A
CONSTRUCTIVE TRUST FOR UNJUST ENRICHMENT BY DEFENDANTS**

68. Plaintiff incorporates by reference the preceding and subsequent paragraphs as though fully set forth herein.

69. As a result of their unlawful conduct described above, defendants have been and will continue to be unjustly enriched. Defendants have been unjustly enriched, to the detriment of

1 Plaintiff and the Class by the receipt of, at a minimum, unlawfully inflated prices and illegal profits
2 for Packaged Ice. Defendants have benefited from their unlawful acts, and it would be inequitable
3 for Defendants to be permitted to retain any of their ill-gotten gains.

4 70. Plaintiff and the Class are entitled to the amount of defendants' ill-gotten gains
5 resulting from defendants' unlawful, unjust and inequitable conduct. Plaintiff and the Class are
6 entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which
7 Plaintiff and the Class may make claims on a *pro rata* basis.

8 **JURY DEMAND**

9 Pursuant to Federal Rule of Civil Procedure 38(b) and otherwise, Plaintiff
10 respectfully demands a trial by jury.

11 **PETITION FOR RELIEF**

12 WHEREFORE, Plaintiff requests that:

13 A. The Court determines that this action may be maintained as a class action under
14 Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be appointed class
15 representative and that Plaintiff's counsel be appointed as counsel for the Class;

16 B. The unlawful combination and conspiracy alleged herein be adjudged and decreed
17 to be in unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

18 C. Plaintiff and the Class recover compensatory damages as provided by law,
19 determined to have been sustained by each of them; and that joint and several judgments in favor
20 of Plaintiff and the Class, respectively, be entered against the defendants, and each of them, in an
21 amount to be trebled in accordance with antitrust laws plus the costs of the action, including
22 reasonable attorneys' fees, expert fees, and accountant fees, and pre- and post-judgment interest;

23 D. Defendants, their affiliates, successors, transferees, assignees, and the officers,
24 directors, partners, agents and employees thereof, and all other persons acting or claiming to act
25 on their behalf, be permanently enjoined from continuing the unlawful contract, combination or
26 conspiracy alleged herein and from:

27 i. Continuing, maintaining or renewing the contract, combination or
28 conspiracy alleged herein, or from engaging in any other contract, combination or conspiracy

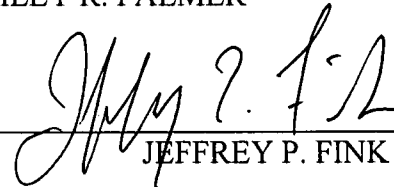
1 having a similar purpose or effect, and from adopting or following any practice, plan, program or
2 device having a similar purpose or effect; and

3 ii. Communicating or causing to be communicated to any other person engaged
4 in the manufacture, distribution or sale of any product except to the extent necessary in connection
5 with a bona fide sales transaction between the parties to such communications;

6 E. Plaintiff and the Class be granted such other, further and different relief as the
7 nature of the case may require or as the Court may deem just and proper.

8 DATED: April 29, 2008

ROBBINS UMEDA & FINK, LLP
BRIAN J. ROBBINS
JEFFREY P. FINK
GEORGE C. AGUILAR
ASHLEY R. PALMER

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19 JACK LANDSKRONER
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22 Telephone: (216) 522-9000
23 Facsimile: (216) 522-9007

24 Attorneys for Plaintiff
25
26
27

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

150276 - MB
* * C O P Y * *
April 29, 2008
11:55:19

Civ Fil Non-Pris

USAO #: 08CV0775 CIVIL JUDGEMENT
Judge.: WILLIAM Q HAYES
Amount.: \$350.00 CK
Check#.: BC8532

Total-> \$350.00

FROM: UNIVERSAL HILLCREST LLC
VS REDDY ICE HOLDINGS, ET AL

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

ORIGINAL

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Universal Hillcrest, LLC

(b) County of Residence of First Listed Plaintiff San Diego County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeffrey P. Fink, Robbins Umeda & Fink, LLP, 610 West Ash St., Suite 1800, San Diego, CA 92101, (619) 525-3990

DEFENDANTS

Reddy Ice Holdings, Inc., Reddy Ice Corporation, Arctic Glacier Income Fund, Arctic Glacier Inc., et al.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC s. 1, 15 USC ss. 15 and 26

Brief description of cause:
class action for violation of Sherman Antitrust Act

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Janis L. Sammartino

DOCKET NUMBER 3:08cv00656-JLS-BLM

DATE

04/29/2008

SIGNATURE OF ATTORNEY OF RECORD

Jeffrey P. Fink

FOR OFFICE USE ONLY

RECEIPT # 150276 AMOUNT \$350 -

APPLYING IFP

JUDGE

MAG. JUDGE

04/29/08 TB